



California Fair Political Practices Commission

February 25, 1986

Vance Raye
Legal Affairs Secretary
Office of the Governor
State Capitol
Sacramento, CA 95814

Re: Your Request for Informal
Assistance: Our File No.
I-86-064

Dear Mr. Raye:

This letter will confirm our telephone conversation of this morning in which you requested informal assistance from this office regarding the following circumstances:

FACTS

Recent wide-spread flooding and other related storm damage has created a major disaster throughout most of Northern California. The Governor, with the assistance of high-level administration staff, is preparing to propose various relief measures to assist disaster victims throughout the affected areas. Some of the administration officials who will be called upon to assist the Governor have either themselves been victims of the disaster or have investments in business entities which have been victims of the disaster. Consequently, these officials could stand to receive some benefit from relief programs either personally or a business in which they hold an investment could be affected by such programs.

QUESTION

You have asked whether these officials will be required to disqualify themselves if their homes, families or businesses will be the beneficiary of the potential disaster relief programs under discussion.

should be required, we will analyze the specific facts regarding materiality at that time.

The controlling issue therefore becomes whether the officials' interests will be affected in a manner which is "distinguishable from the effect upon the public generally" (Section 87103). If not, disqualification will not be required. The Commission has adopted a regulation which further explains this concept, 2 Cal. Admin. Code Section 18703.

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. Except as provided herein, an industry, trade or profession does not constitute a significant segment of the general public.

2 Cal. Admin. Code Section 18703
(Emphasis added.)

Based upon the information generally at hand, it appears that relief programs for families, landowners and businesses victimized by the recent storm and flood damage throughout most of Northern California will affect a "significant segment of the public." In determining whether an affected group constitutes a significant segment of the public, the Commission has not established a numerical standard, but has elected to pursue a case-by-case analysis, taking into consideration the numerosity and the diversity of the group in question. (See Commission Opinions to: Owen, 2 FPPC Opinions 77, No. 76-005, June 2, 1976; Ferraro, 4 FPPC Opinions 62, No. 78-009, November 7, 1978; Overstreet, 6 FPPC Opinions 12, No. 80-010, March 2, 1981; and Legan, 9 FPPC Opinions 1, No. 85-001, August 20, 1985.)

In the Owen Opinion, supra, the Commission specifically concluded that retail businesses constituting the downtown business community in Davis where a "significant segment" of the general public and not an "industry trade or profession". Homeowners in Davis were also found to constitute a "significant segment" of the public. In each instance, the group was both substantial in relative numbers and diverse in makeup. Landowners, families and businesses

CONCLUSION

Generally, disqualification will not be required because the effects of decisions in which these officials participate will be shared in substantially the same manner by a significant segment of the general public. However, in certain instances, this general rule may not apply; these are discussed below.

ANALYSIS

The Political Reform Act (Act)^{1/} requires public officials to disqualify themselves from making, participating in making, or using their official position to influence the making of, a decision in which the official has a financial interest. Section 87103 defines when a financial interest exists.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

* * *

The officials here in question will be making or participating in making decisions which will have reasonably foreseeable financial effects upon one or more of the enumerated economic interests. For purposes of this letter, we assume that the financial effects in each instance will meet the standard for materiality. If specific advice

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code.

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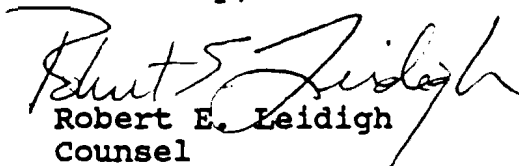
throughout Northern California who are disaster victims meet these standards.

Therefore, so long as the officials who are participating in the decisionmaking process will only be affected (or their business will be affected) in a manner which is "substantially the same" as other families and individuals or other businesses, which were also victims of the disaster, no disqualification will be required.

However, if, at some point in the decisionmaking process, lines must be drawn between different segments of these overall, generic groupings, it is conceivable that the specific group into which a given official's interest falls (in terms of being affected in substantially the same manner) may become either too small or lack sufficient diversity to be considered a "significant segment of the public." See, Legan Opinion, supra. If that situation arises, the official may wish to seek further specific advice to determine if the materiality standard is met, in which case disqualification would be required.

I trust this informal assistance satisfactorily provides you with the guidance you seek at this time. We will provide any further assistance needed upon request. Should you have questions regarding this letter's contents, I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:sm

Enclosures: Copies of cited opinions
